

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
11-CR-57-A

BERGAL L. MITCHELL,
Defendant.

This case was referred to Magistrate Judge Jeremiah J. McCarthy for supervision of all pretrial proceedings. Defendant Mitchell moved to dismiss the Indictment and for discovery. After briefing and oral argument of the motions, on July 30, 2012, Magistrate Judge McCarthy issued a Report, Recommendation and Order recommending that defendant's motion to dismiss be denied, and the motions for discovery be granted in part and denied in part. (Dkt. No. 74).

On September 12, 2012, defendant Mitchell filed objections to, and an appeal of, the Magistrate Judge's Report, Recommendation and Order. The United States filed a response September 27, 2012. Defendant filed a reply October 26, 2012.

Defendant Mitchell was granted leave to supplement his motion to dismiss. After briefing, on December 28, 2012, Magistrate Judge McCarthy issued another Report and Recommendation (Dkt. No. 119) recommending that the motion to dismiss be denied.

On January 25, 2013, defendant Mitchell filed objections to the Magistrate Judge's Report and Recommendation (Dkt. No. 119), the United States responded February 15, 2013, and defendant replied March 7, 2013. Oral argument was held September 12, 2013 and supplemental briefing was filed September 20, 2013 and October 1, 2013. Additional oral argument was held October 22, 2013.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report, Recommendation and Order (Dkt. No. 74) to which objections have been made and reviews the issues under appeal by a clearly erroneous or contrary to law standard of review. Upon *de novo* review and after reviewing the submissions of the parties and hearing oral argument, the Court adopts the proposed findings of the Report, Recommendation and Order. *Id.* Upon clearly erroneous or contrary to law review of the issues under appeal, the Court denies the appeal. Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report Recommendation and Order (Dkt. No. 74), defendant's motions to dismiss are denied in all respects and defendant's appeal is denied in all respects.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation (Dkt. No. 119) to which objections have been made. Upon *de novo* review, and after reviewing the submissions of the parties and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation. *Id.* Accordingly, for the additional reasons set forth in Magistrate Judge McCarthy's Report and

Recommendation (Dkt. No. 119), defendant's motion to dismiss the Indictment is denied in all respects. The parties shall appear November 25, 2013 at 12:30 p.m. to set a date for trial.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: November 22, 2013